

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California
<http://www.spb.ca.gov/spb.htm>

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES

APRIL 4, 2000

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Florence Bos, President
Ron Alvarado, Vice President
Richard Carpenter, Member
William Elkins, Member
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The State Personnel Board's budget was approved by the Senate Budget Sub Committee as indicated in the Governor's budget.
- B. Staff from the State Personnel Board's Appeals Division conducted a seminar on the procedures and policies governing non-evidentiary appeals.
- C. State Personnel Board staff will hold a job fair on April 14, 2000 in Oakland.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

- A. Alexander v. State Personnel Board - This case, pending in the Third District Court of appeal, challenging the validity of the Department of General Services' Career Management Assignment/Career Supervisory Assignment demonstration project, is scheduled for oral argument on April 18, 2000 at 9:30 a.m. The trial court had upheld the validity of the project.
- B. Jesse Brown v. Department of General Services (DGS) - DGS has appealed the Superior Court's ruling that overturned the State Personnel Board's precedential decision in Jesse Brown (1999) SPB Dec. No. 99-02. The trial court had found that Jesse Brown was entitled to a pre-termination due process hearing.
- C. Bresnahan v. State Personnel Board - On March 24, 1999, the trial court dismissed the petition for writ of mandate finding it untimely.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. SB 2025 (Burton) is set for hearing in Senate Public Employment & Retirement committee on April 10, 2000. The bill will be amended to include State Personnel Board's proposal that addresses Attorney Fees Assignment.
- B. The Assembly Budget Sub Committee #4 is set for hearing May 10, 2000 at 1:30 p.m. in room 437 at the State Capitol.

On April 4, 2000, the State Personnel Board voted on the following legislative bills:

- A. The Board voted to support if amended AB 2301 (Lowenthal). AB 2301 (Lowenthal) permits CPS to continue to contract with state agencies to conduct licensing examinations.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

- B. The Board voted to be neutral if amended on AB 2304 (Davis). AB 2304 (Davis) will consolidate provisions of the Public Contract Code governing personal services contracts and consulting services contracts.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

5. PERS UPDATE - Sean Harrigan

The Board was advised of the following:

- A. Michael Flaherman was elected Chairperson and Sean Harrigan was elected Vice Chairperson of the Investment Committee.
- B. Phil Angelides was elected Chairperson of the Health Committee and Rob Feckner was elected Chairperson of the Benefits and Program Administration Committee.
- C. The Public Employee Retirement System (PERS) has established a committee to examine issues of interest to PERS and the State Teacher's Retirement System such as direct contracting with doctors and hospitals.
- D. The Public Employee Retirement System (PERS) is continuing its search for a Chief Investment Officer. At the last meeting PERS reviewed its asset allocation.

6. ORAL ARGUMENT

Oral argument in the matter of ALLEN VIZARD, CASE NO. 99-3708. Appeal from 30-calendar day's suspension. Department of Corrections.

Persons Participating:

Tris Colman, Employee Representative, Department of Corrections, representing appellant
Herb Connor, Employee Relations Officer, representing Department of Corrections

ACTION: Submitted

7. ORAL ARGUMENT

Oral argument in the matter of THOMAS BENSON, CASE NO. 99-1386. Appeal from dismissal. Department of Corrections

Persons Participating:

Appellant Thomas Benson, Pro Per
Marguerite D. Seabourn, Assistant Chief Counsel, representing
Department of Personnel Administration

ACTION: Submitted

8. HEARING - PRE-LICENSED PSYCHIATRIC TECHNICIAN (Forensic Facility) PRE-EMPLOYMENT DRUG TESTING

The Department of Developmental Services proposes to retitle the Pre-licensed Psychiatric Technician (Forensic Facility), Psychiatric Technician (Forensic Facility) and Senior Psychiatric Technician (Forensic Facility) to Pre-licensed Psychiatric Technician (Safety), Psychiatric Technician (Safety) and Senior Psychiatric Technician (Safety); to establish the classifications of Psychiatric Technician Assistant (Safety) and Psychiatric Technician Trainee (Safety); and to designate the classifications of Pre-licensed Psychiatric Technician (Safety), Psychiatric Technician (Safety), Psychiatric Technician Assistant (Safety) and Psychiatric Technician Trainee (Safety) as sensitive for the purpose of pre-employment drug testing.

Persons Participating:

Patricia Embly, Staff, California State Personnel Board
Linda Bailey, RN, Coordinator of Nursing Services, Department of Developmental Services
Ken Murch, Consultant, California Association of Psychiatric Technicians
Virginia Rose, Chief of Operations, Personnel Services Section, Department of Developmental Services

ACTION: Adopted staff recommendation on April 4, 2000.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

BOARD ACTIONS

9. STATE PERSONNEL BOARD SUMMARY MINUTES OF MARCH 21, 2000

ACTION: Adopted on April 4, 2000

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

10. ACTION ON SUBMITTED ITEMS

ACTION: See pages 13-14

11. ADMINISTRATIVE LAW JUDGE CASES

On April 4, 2000, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

PETITION GRANTED

ROBERT DAVIS, CASE NO. 97-2572

Appeal from dismissal

Department of Corrections

ACTION: Board Decision Modified Dismissal to 6 Months
Suspension with all Back Pay and Benefits

REJECTED DECISION

GAYLE MCCORMICK, CASE NO. 99-1549

Appeal from demotion

Department of Corrections

ACTION: Submitted

COURT REMAND DECISION

JESSE BROWN, CASE NO. 98-0384

Appeal from constructive medical termination

Department of General Services

ACTION: Board resolution; IT IS RESOLVED AND ORDERED THAT, in light of stay imposed by Code of Civil procedure §916 and §1094.5(g), SPB will not take any further action in this matter pending determination of DGS's appeal. Once the stay has been lifted, SPB will comply with whatever final order may be issued by the Court

PROPOSED DECISIONS

KAREN L. PALADA, CASE NO. 99-1668
Appeal from 20 working days suspension
Department of California Highway Patrol
ACTION: Suspension Revoked

DANIEL STAATS, CASE NO. 99-3577
Appeal from 5 working days suspension
Department of Transportation
ACTION: Suspension Modified to Official Reprimand

MITCHELL ROMERO, CASE NO. 99-4309
Appeal from official reprimand
Department of Corrections
ACTION: Official Reprimand Sustained

JOE PIERCE, CASE NO. 99-3037
Appeal from 15 working days suspension
Department of California Highway Patrol
ACTION: Suspension Sustained

KENNETH PRIOR, CASE NO. 9-1671
Appeal from dismissal
Department of Corrections
ACTION: Board Adopted Finding of Fact, but Modified
Dismissal to 5 Days Suspension

DAVID L. PINSON, CASE NO. 99-5344
Appeal from 5 working days suspension
Department of Corrections
ACTION: Suspension Sustained

CLIFTON TRASK, JR., CASE NO. 99-3346
Appeal from dismissal
Department of Corrections
ACTION: Dismissal Revoked

WILLIE PATTON, CASE NO. 00-0032
Appeal from official reprimand
Department of Corrections
ACTION: Official Reprimand Sustained

CORAZON FERNANDEZ, CASE NO. 99-4777
Appeal from 2-step reduction in Salary For 3 months
State Compensation Insurance Fund
ACTION: Reduction in Salary Sustained

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RACHELLE CHANDLER-DACANAY, CASE NO. 99-4791
Appeal from official reprimand
Department of corrections
ACTION: Official Reprimand Sustained

LUIZ CHAVEZ, CASE NO. 99-1664
Appeal from demotion
Department of Corrections
ACTION: Demotion Revoked

FRED L. MARTINO, CASE NO. 99-3892
Appeal from dismissal
Department of Justice
ACTION: Dismissal Sustained

GERALD L. AUGUST, CASE NO. 99-4950
Appeal from 30-calendar day's suspension
Department of Correction
ACTION: Board adopted Finding of Fact, but Modified 30
Calendar Days Suspension to 15 Days Suspension

GEORGE COLLINS, CASE NO. 99-3799
Appeal from rejection
State Compensation Insurance Fund
ACTION: Rejection Affirmed and Appeal Denied

MARIA COLON, CASE NO. 99-5161
Appeal from back pay after revocation of medical termination
Department of Health Services
ACTION: Back Pay, Interest and Benefits Awarded

MICHAEL CALLAWAY, CASE NO. 99-1041
Appeal from dismissal
Department of Developmental Services
ACTION: Administrative Law Judge's Proposed Decision
Rejected by Board. Board to Decide Case Itself

JOHN LANE, CASE NO. 99-4312
Appeal from 30 calendar day's suspension and involuntary
transfer/administrative reassignment
Department of Corrections
ACTION: Board revoked involuntary transfer, but sustained
30-calendar day's suspension

PHYLLIS BEARD, CASE NO. 99-4689
Appeal from 5 working days suspension
Human Services Agency
ACTION: Suspension Sustained

DANIEL ASHMAN, M.D., CASE NO. 99-4752
Appeal from constructive termination
Department of Corrections
ACTION: Dismissed for Lack of Jurisdiction

ROBERT BURKS, CASE NO. 98-4822
Discrimination complaint
Department of California Highway Patrol
ACTION: Proposed Decision Rejected by Board and Remanded
matter to the Chief Administrative Law Judge for
reassignment to another ALJ, who shall conduct an
evidentiary hearing concerning the appeal from
discrimination

LINDA C. BAER, CASE NO. 99-1303
Appeal from denial of permanent red circle rate
Department of California Highway Patrol
ACTION: Administrative Law Judge's Proposed Decision
Rejected by Board. Board to Decide Case Itself

PETITIONS FOR REHEARING

PAMELA KING, CASE NO. 98-1586 (Precedential No. 99-11)
Appeal from dismissal
Department of the Youth Authority
ACTION: Petition for Rehearing Filed by Respondent Denied

MARTIN VEAL, CASE NO. 98-4922
Appeal from CEA termination
MARTINE VEAL, CASE NO. 99-0457
Appeal from demotion
Department of Corrections
ACTION: Petition for Rehearing Filed by Respondent Denied

12. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 15-17

13. MISCELLANEOUS APPEALS DIVISION CASES
(Discrimination Complaints, Withholds, Voided Appointments,
Rule 211 Appeals, Petitions for Rehearing)
On April 4, 2000, the Board adopted the following decisions
presented by Linda Brooks, Assistant Executive Officer,
California State Personnel Board.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

VOIDED APPOINTMENTS

- A. LOUIS BONSIGNORE, Case No. 99-1539
Classification: Career Executive Assignment I
ACTION: GRANTED - The appeal on the voiding of the
emergency appointment.
DENIED - The appeal on the voiding of the
permanent appointment.
- B. ALEJANDRA MEJIA, Case No. 99-3928
Classification: Registered nurse, DMS & DDS
ACTION: Appellant is not required to repay the amount
she made while employed.

RULE 211; REQUEST TO TAKE CIVIL SERVICE EXAMINATION

- C. EDWARD LOPEZ, Case No. 99-3894
Classification: Construction Supervisor II and
Construction Inspector I
Action: WITHDRAWN

WITHHOLD FROM CERTIFICATION

- D. SCOTT CLAIN, Case No. 99-0506
Classification: Hospital Peace Officer I
ACTION: DENIED

14. MEDICAL APPEALS

On April 4, 2000, the Board adopted the following decisions
presented by Linda Brooks, Assistant Executive Officer,
California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

- A. LANCE LOCKE, Case No. 99-1488
Classification: Correctional Officer
ACTION: DENIED
- B. SPENCER WILLIAMS, Case No. 99-5132
Classification: Cadet, California Highway Patrol
ACTION: DENIED
- C. ALVARO SOTELO, Case No. 00-0564
Classification: Correctional Officer
ACTION: GRANTED

DISMISSAL CASES

- D. GLORIA L. BRAMBLETT, Case No. 99-5179
Classification: Youth Correctional Officer
ACTION: DISMISSED

15. REQUEST TO FILE CHARGES CASES

On April 4, 2000, the Board took the following actions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

- A. PAUL FURTADO, Case No. 99-3097
Classification: Unknown
ACTION: DENIED

16. NON-HEARING CALENDAR

On April 4, 2000, the Board adopted item A and item B was withdrawn. These items were presented by Laura Aguilera, Chief, Personnel Resources and Innovations Division, California State Personnel Board.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

- A. PROGRAM ASSISTANT-DEVELOPMENTAL DISABILITIES PROGRAMS
PROGRAM ASSISTANT-MENTAL DISABILITIES PROGRAMS
PROGRAM DIRECTOR-MENTAL DISABILITIES PROGRAMS
PROGRAM DIRECTOR-DEVELOPMENTAL DISABILITIES PROGRAMS
STANDARD COMPLIANCE COORDINATOR
The Department of Developmental Services proposes specification revisions to the classifications of Program Assistant-Developmental Disabilities Programs, Program Assistant-Mental Disabilities Programs, Program Director-Mental Disabilities Programs, Program Director-Developmental Disabilities Programs, and Standard Compliance Coordinator.

- B. WITHDRAWN

17. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

- A. CEA POSITION ACTIONS CURRENTLY UNDER CONSIDERATION

- (1) DEPUTY COMMISSIONER, FRAUD DIVISION
The Department of Insurance proposes to allocate the above position to the CEA category to plan, organize and direct the statewide peace office

functions of the department and the department's anti-fraud programs. The department indicates that the position will be at the second organizational level and will report to the Chief Deputy Commissioner.

- (2) DEPUTY DIRECTOR, REAL ESTATE SERVICES DIVISION
The Department of General Services proposes to allocate the above position to the CEA category to develop and direct all activities related to the real estate programs in the areas of customer service, real estate asset management, project management, professional services, building management and internal support services to meet the facility needs of the state agencies throughout California. The department indicates that the position will be at the second organizational level and will report to the Director.
- (3) SPECIAL ASSISTANT TO THE DIRECTOR
The Health and Human Services Agency Data Center proposes to allocate the above position to the CEA category to establish policies that ensure the coordination required to effectively manage issues, concerns, projects/assignments critical to the Director. The department indicates that the position will be at the second organizational level and will report to the Director.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

- (1) ASSISTANT DEPUTY DIRECTOR, WORKFORCE DEVELOPMENT BRANCH
The Employment Development Department's proposal to allocate the above position to the CEA category has been approved effective March 9, 2000.
- (2) CHIEF, FISCAL OPERATIONS
CHIEF, HUMAN RESOURCES & BUSINESS SERVICES
The Department of Consumer Affairs' proposal to allocate the above positions to the CEA category has been disapproved effective March 14, 2000.

- (3) CHIEF DEPUTY DIRECTOR
The Department of Housing & Community Development's proposal to allocate the above position to the CEA category has been approved effective March 14, 2000.
- (4) ASSISTANT DIRECTOR, MISSION SUPPORT BRANCH
The Department of Justice's proposal to allocate the above position to the CEA category has been disapproved effective March 14, 2000.

C. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND
1/1/99

- (1) CHIEF, NATIVE ANADROMOUS FISH AND WATERSHED
The Department of Fish and Game's request to refill the above position has been approved effective March 7, 2000
- (2) DEPUTY DIRECTOR, WORKFORCE DEVELOPMENT BRANCH
The Employment Development Department's request to refill the above position has been approved effective March 9, 2000.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. EQUAL OPPORTUNITY GOALS FOR MINORITIES AND WOMEN
(Hearing held February 9, 2000).

NO ACTION

2. DEANNA DAVIES, CASE NO. 99-0073. Appeal from determination of back pay. State Board of Equalization. (Oral argument held February 9, 2000.)

ACTION: On April 4, 2000, adopted Board decision awarding back pay, benefits and interest.*

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

3. BRYAN W. DUNCAN, CASE NO. 99-1315. Appeal from 10 working days suspension. Department of California Highway Patrol. (Oral argument held March 7, 2000.)

ACTION: On April 4, 2000, adopted Board decision revoking 10 working days suspension with all back pay and benefits.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

4. MICHAEL A. THOMPSON, CASE NO. 98-3739. Appeal from dismissal. Department of Corrections. (Oral argument held March 7, 2000.)

NO ACTION

5. GREG GRUSZIEWICZ, CASE NO. 99-0834. Appeal from dismissal. Department of Developmental Services. (Oral argument held March 7, 2000.)

ACTION: On April 4, 2000, adopted Board decision revoking dismissal and awarding all back pay and benefits.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

*Adopted as Precedential Decision #00-04. [NOTE: Precedential Decisions of the State Personnel Board are published and available by subscription from Continuing Education of the Bar (CEB) in Berkeley. To subscribe, call CEB, toll free, at (800) 924-3924.]

6. APPEAL OF THE DEPARTMENT OF PERSONNEL ADMINISTRATION FROM THE EXECUTIVE OFFICER'S DECEMBER 21, 1999 DISAPPROVAL OF DPA'S CONTRACT NO. S9840129 WITH ALEXANDER COHN FOR "MINI-ARBITRATION SERVICES" IN RESPONSE TO THE REQUEST FOR REVIEW SUBMITTED BY THE ASSOCIATION OF CALIFORNIA STATE ATTORNEYS AND ADMINISTRATIVE LAW JUDGES. (Hearing held March 7, 2000).

ACTION: On April 4, 2000, adopted Board decision sustaining the Executive Officer's disapproval of the contract.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

April 4, 2000

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on April 4, 2000.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.